
UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

)
) DEFENSE REQUEST FOR
) RELIEF IN THE FORM OF
) PERMISSION TO AMEND ITS
) REQUEST FOR DOCKETING
)
)
) September 10, 2004

1. Relief Requested. The Defense requests to amend its motion for docketing for the commencement of trial on the merits on 15 November 2004 vice 11 December 2004; and for the Presiding Officer designate 15 November 2004 as the date for commencement of proceedings in the event that the Military Commission is not abated or dismissed pursuant to defense motions.

2. Justification: On 27 August 2004, Mr. Hamdan accepted an offer from Professor Neal Katyal communicated to Mr. Hamdan by LCDR Swift, his military defense counsel to serve as Mr. Hamdan's civilian pro-bono counsel. On 7 September 2004, Professor Katyal submitted an application for acceptance into the pool of qualified civilian defense counsel and a completed SF 86 to the Chief Defense Counsel. Professor Katyal has previously served as the Advisor for National Security Affairs to the Deputy Attorney General, United States Department of Justice, where he held a Top Secret/SCI clearance, and as such expedited approval of his application is anticipated.

Professor Katyal is currently serving as Professor of Law at the Georgetown University Law Center and is on a research sabbatical for the Fall Semester of the 2004/2005 academic year. As such Professor Katyal is available to commence immediate representation of Mr. Hamdan. Professor Katyal, however, is committed to teaching two academic courses at the Georgetown Law Center in the Spring Semester. As such, a delay of Mr. Hamdan's trial until January 2005 severely impacts Professor Katyal's ability to participate and would prejudice the defense.

Specifically the Defense proposes that opening statements commence on 15 November 2004 and that the government proceed through its case in chief from 15 November to 23 November 2004; that the Commission then break for the Thanksgiving holidays and that the Commission reconvene for hearing of the Defense case or if necessary continuation of the Prosecution's case on 29 November continuing uninterrupted through sentencing if necessary. This schedule permits *United States v. Al Qosi* to commence as scheduled on 7 December 2004. In addition, by breaking for the Thanksgiving holiday, it will ensure the presence of out of country witnesses at the commencement of the Defense case without having such witnesses present from the commencement of trial on the merits.

This request is in keeping with Mr. Hamdan's earlier request for speedy trial expedited federal proceedings, and the Secretary of Defense's directive and Military Commission Order No. 1, that Presiding Officer shall ensure expeditious conduct of the trial. (MCO No. 1, para. 4.A.(5)(c)). It also accords with the representations made by the United States Department of Justice in the

civilian case of *Swift v. Rumsfeld*, where the Government has stated that “[b]oth the government and Hamdan have proposed that his commission trial begin in December.” Consolidated Return in *Swift v. Rumsfeld*, at 6. Because of the *Al Qosi* trial, it may therefore be necessary to begin Mr. Hamdan’s trial in the month of November.

In the event that the Presiding Officer is excused from further participation in the subject commission this request is made in the alternative to the Appointing Authority pursuant to the authority delegated to him by the Secretary of Defense of the Secretary’s authority to provide guidance regarding the time and place of Military Commissions. (Sect. 4, para.(c)(1) of Presidential Military Order of 13 November 2003)

Dr. Charles Schmitz, the Defenses detailed translator, has indicated that in the event the trial date is shifted to 15 November 2004, the University of Maryland at Towson will support his taking a leave of absence from the Fall Semester to assist the Defense in pretrial preparations and to participate in the Military Commission. In order for the University of Maryland at Towson to support Dr. Schmitz’s request for a leave of absence, however, the request must be made no later than 15 September 2004. Accordingly the Defense seeks action on this request no later than 15 September 2004.

Submission of this request is not a waiver of the Defenses earlier request for abatement pending the resolution of the legality in the Federal Court. Instead, it is a docketing request made to ensure that Mr. Hamdan’s case is handled in an expeditious manner by the Military Commissions in the event that abatement is not granted.

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